

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
IQ TELECOM, INC.)
) No. 10-0379
Application for Designation as)
an Eligible Telecommunications)
Carrier for purpose of)
receiving Federal Universal)
Service Support pursuant to)
Section 214(e)(2) of the)
Telecommunications Act of 1996.)

Chicago, Illinois
September 15, 2011

Met pursuant to notice at 11:00 a.m.

BEFORE:

MR. JOHN RILEY, Administrative Law Judge.

APPEARANCES :

MR. PATRICK CROCKER
107 West Michigan Avenue, 4th Floor
Kalamazoo, Michigan 49007
appeared for Applicant,
telephonically;

WARD & WARD, P.C., by
MR. MICHAEL W. WARD
One Rotary Center
1560 Sherman Avenue, Suite 310
Evanston, Illinois 60201
appeared for Applicant,
telephonically;

1 APPEARANCES: (Continued)

2

MS. NICOLE T. LUCKEY
3 MR. MICHAEL J. LANNON
MR. MATTHEW L. HARVEY
4 160 North LaSalle Street, Suite C-800
Chicago, Illinois 60601
5 appeared for Commission Staff;

6

7 MS. BARBARA E. COHEN
7428 Anton Circle, NE
8 Albuquerque, New Mexico 87122
appeared for UTAC, telephonically;

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10

MR. DANIEL GENTILE
11 3221 West 127th Street
Blue Island, Illinois 60406
12 appeared pro se;

13

14 MS. SUSAN L. SATTER
100 West Randolph Street
15 Chicago, Illinois 60601
appeared for the People
16 of the State of Illinois.

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SULLIVAN REPORTING COMPANY, by
20 Teresann B. Giorgi, CSR

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|-------------------|-------------|-------------|---------------------------|---------------------------|------------------------------|
| <u>Witnesses:</u> | <u>Dir.</u> | <u>Crx.</u> | <u>Re-</u> <u>dir.</u> | <u>Re-</u> <u>crx.</u> | <u>By</u> <u>Examiner</u> |
| NONE | | | | | |

E X H I B I T S

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| <u>APPLICANT'S</u> | <u>FOR IDENTIFICATION</u> | <u>IN EVIDENCE</u> |
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1 JUDGE RILEY: Pursuant to the direction
2 of the Illinois Commerce Commission, I call
3 Docket 10-0379. This is an application by
4 IQ Telecom, Inc., for designation as an eligible
5 telecommunications carrier for purposes of receiving
6 Federal Universal Service Support, pursuant to
7 Section 214(e)(2) of the Telecommunications Act of
8 1996.

9 And beginning with Mr. Crocker, would
10 you enter an appearance for the record, please.

11 MR. CROCKER: Yes.

12 Patrick Crocker, from Crocker &
13 Crocker, 107 West Michigan Avenue, Kalamazoo,
14 Michigan, appearing on behalf of the Applicant.

15 JUDGE RILEY: Thank you.

16 MR. WARD: Michael Ward of Ward & Ward, PC,
17 1560 Sherman Avenue, Evanston, Illinois 60201, on
18 behalf of the Applicant.

19 JUDGE RILEY: Thank you.

20 And for Commission Staff?

21 MS. LUCKEY: On behalf of the Staff of the
22 Illinois Commerce Commission, Nicole T. Luckey,

1 Michael J. Lannon and Matthew L. Harvey, 160 North
2 LaSalle Street, Suite C-800, Chicago, Illinois
3 60601.

4 Also present in the hearing room is
5 Dr. Qin Liu of the Telecommunications Division.

6 JUDGE RILEY: Thank you.

7 And, Ms. Cohen?

8 MS. COHEN: Yes.

9 On behalf of the Universal Telephone
10 Assistance Corporation, this is Barbara E. Cohen,
11 C-o-h-e-n, 7428 Anton Circle, NE, Albuquerque,
12 New Mexico 87122.

13 And I'm also entering an appearance of
14 Christian F. Binnig, B-i-n-n-i-g, and
15 Matthew Provance, P-r-o-v-a-n-c-e, Mayer Brown, LLP,
16 71 South Wacker Drive, Chicago, Illinois 60606.

17 JUDGE RILEY: Thank you.

18 And, Mr. Gentile, were you filing an
19 appearance in this matter?

20 MR. GENTILE: Yes.

21 My name is Daniel Gentile, IQ Telecom.

22 JUDGE RILEY: And please state your office

1 address, please.

2 MR. GENTILE: My office address is 3221 West
3 127th Street, Blue Island, Illinois 60406.

4 JUDGE RILEY: Thank you.

5 And the first order of business that I
6 have this morning, I have a motion from the law firm
7 of Ward & Ward to withdraw from this matter.

8 Does everyone have a copy of that
9 motion?

10 MR. WARD: I sent that out this morning, your
11 Honor and everybody should have received an e-mail
12 to that effect.

13 JUDGE RILEY: What is the response to the
14 motion?

15 Mr. Crocker?

16 MR. CROCKER: Your Honor, I believe, I've also
17 filed a motion to withdraw.

18 JUDGE RILEY: You have?

19 MR. CROCKER: I would support Mr. --

20 JUDGE RILEY: You're turning off, Mr. Crocker.

21 MR. CROCKER: Yeah, I would support his motion,
22 your Honor. I've also filed a motion to withdraw.

1 JUDGE RILEY: That one I didn't get.
2 Anyone else get a motion from
3 Mr. Crocker?
4 MS. LUCKEY: I have not received that, either.
5 MS. COHEN: I received that by e-mail just
6 minutes ago, probably after I dialed in.
7 JUDGE RILEY: All right. Give me just a moment.
8 Let me see if it's on the -- if we've received that.
9 I'll be right back.
10 Let's go off the record.
11 (Whereupon, a discussion
12 was had off the record.)
13 JUDGE RILEY: Back on the record.
14 Yes, Mr. Crocker had sent e-mails out
15 with an attachment that he has submitted the same
16 motion to withdraw from this docket. I checked with
17 the Commission's e-Docket system and it's not posted
18 yet, but obviously it's been received so recently
19 it's going to take probably a few minutes to get it
20 posted.
21 Well, what is Staff's response to the
22 motion to withdraw?

1 MS. LUCKEY: Staff certainly has no objection to
2 the motion to withdraw, but we would ask if the
3 Company is intending to be represented by other
4 counsel at this point in time?

5 MR. GENTILE: Judge, this is Dan Gentile.

6 No, not at this time, Judge.

7 JUDGE RILEY: Ms. Cohen, what is the response of
8 UTAC to the motion?

9 MS. COHEN: UTAC has no objection to the motion.

10 JUDGE RILEY: Has no objection?

11 MS. COHEN: Right, to either motion.

12 JUDGE RILEY: Thank you.

13 Did someone just join us?

14 MS. SATTER: Yes, Susan Satter. I'm very sorry
15 to be late.

16 JUDGE RILEY: Good morning, Ms. Satter. I'm
17 sorry, we keep forgetting about you. Your
18 appearance is sporadic.

19 We're discussing right now that both
20 Mr. Crocker and the law firm of Ward & Ward have
21 submitted motions to withdraw as counsel in
22 Docket 10-0379.

1 MS. SATTER: Both have?

2 JUDGE RILEY: I'm sorry?

3 MS. SATTER: I saw that Mr. Ward had. I didn't
4 see that Mr. Crocker had.

5 JUDGE RILEY: Mr. Crocker's was sent very
6 recently, just a few minutes ago. I obtained a copy
7 of it and it hasn't posted on the Commission's
8 e-Docket system yet.

9 But does the Attorney General have
10 any -- well, let me ask, first of all, could you
11 enter an appearance this morning.

12 MS. SATTER: Appearing on behalf of the People
13 of the State of Illinois, Susan L. Satter,
14 S-a-t-t-e-r, 100 West Randolph Street, Chicago,
15 Illinois 60601.

16 JUDGE RILEY: Thank you.

17 And does the Attorney General have any
18 objection or response -- other response with regard
19 to the motions to withdraw?

20 MS. SATTER: Will the Company be represented?
21 Do they have in-house counsel?

22 JUDGE RILEY: Mr. Gentile, what is your role

1 with the Applicant?

2 MR. GENTILE: I am the vice president of the
3 Company.

4 JUDGE RILEY: And are you also an attorney or
5 in-house counsel?

6 MR. GENTILE: No, sir.

7 JUDGE RILEY: Will the Company be obtaining
8 counsel?

9 MR. GENTILE: No, I'll be representing myself --
10 or the Company, I should say.

11 JUDGE RILEY: It brings up another problem,
12 corporations, it's my understanding, cannot
13 represent themselves in Illinois.

14 MR. LANNON: Your Honor -- and this is Mike
15 Lannon -- I don't have a Part 200 in front of me.
16 It might be wise for me to go grab one. But I
17 thought that corporate officers may represent
18 themselves, is my vague recollection.

19 MS. SATTER: You know, I can check that.

20 JUDGE RILEY: By all means.

21 It's my understanding -- I don't know
22 if our rules are superceded by other statute or case

1 law, that's the problem.

2 MR. LANNON: Oh, I see. That, I don't know
3 anything about that.

4 JUDGE RILEY: It's been my understanding for a
5 while that the corporations in Illinois are
6 precluded from pro se appearances.

7 MR. LANNON: And that would be from an Illinois
8 statute or from a Court decision?

9 JUDGE RILEY: I think it's a Supreme Court rule.

10 MR. LANNON: Oh, okay.

11 JUDGE RILEY: And there may also be a court
12 case.

13 MR. LANNON: Thank you, your Honor. I'll check
14 that out.

15 MR. WARD: Your Honor, I have Administrative
16 Code 200 --

17 JUDGE RILEY: Excuse me. Who's speaking,
18 please?

19 MR. WARD: I'm sorry. This is Michael Ward.

20 JUDGE RILEY: Go ahead.

21 MR. WARD: Section 200.09, Appearances,
22 Subsection (c), says, A corporation or association

1 may appear by a bona fide officer, employee or
2 representative.

3 JUDGE RILEY: All right. Now all we've got to
4 do is find out what --

5 MR. WARD: It says, Only persons admitted to
6 practice as attorneys and counselors at law shall
7 represent others in proceedings before this
8 Commission in any matter involving the exercise of
9 legal skill or knowledge.

10 So, apparently, a corporation can have
11 an officer in an administrative hearing.

12 MS. LUCKEY: I believe we've allowed that in
13 other ETC cases that I've been on, but I would not
14 know without researching what we've discussed
15 whether or not there's a conflict.

16 MR. WARD: The case law that I'm familiar
17 with -- this is Michael Ward again -- case law I'm
18 familiar with, your Honor, correctly states it as
19 far as manific (phonetic) in a court of law. I
20 think their rules are different than administrative
21 proceedings. I know that in other administrative
22 bodies, I've seen corporations represent themselves,

1 such as tax matters.

2 JUDGE RILEY: All right. Thanks.

3 MR. LANNON: Your Honor, maybe one way to
4 proceed is to ask Mr. Gentile if he plans on filing
5 rebuttal testimony? I think you're probably aware,
6 the Company did not file rebuttal testimony on their
7 scheduled date. We have a lot of outstanding DRs.

8 I'm wondering if he plans on
9 proceeding to prosecute his position here.

10 MR. GENTILE: Judge, I would like to file a
11 30-day continuance.

12 JUDGE RILEY: A request for a 30-day
13 continuance.

14 MR. GENTILE: Correct. I would like to request
15 a 30-day continuance so I can regroup.

16 JUDGE RILEY: I understand that.

17 Can you give any idea as to how you're
18 going to proceed from this point? Will the Company
19 be obtaining counsel, for one thing?

20 MR. GENTILE: No.

21 That's why I would like to get a
22 30-day continuance so I can regroup and put my

1 orders together and figure out what I have to do to
2 move forward.

3 MR. LANNON: Your Honor, Staff -- everything is
4 in a little bit of flux right now, but we are
5 contemplating a motion to dismiss, particularly if
6 the Illinois Supreme Court rules prevent corporate
7 officers from representing themselves in an
8 administrative proceeding. We'll check that out.

9 There are other grounds for a motion
10 to dismiss at this point in time. We haven't come
11 to a conclusion on whether to do that or not. But I
12 don't think we have an objection to giving
13 Mr. Gentile 30 days to regroup.

14 JUDGE RILEY: So there's no problem with
15 discharging the two attorneys in this matter.

16 MR. LANNON: Not from Staff's perspective.

17 MS. LUCKEY: No.

18 JUDGE RILEY: Ms. Satter, did you return?

19 MS. SATTER: No, I do not have an objection.

20 JUDGE RILEY: Okay. The question I was going to
21 ask was, did you have any --

22 MS. SATTER: Although I do agree with the other

1 parties that, you know, it's reasonable to give the
2 Company 30 days to respond and then notify the
3 parties on what they intend to do. But certainly
4 the opportunity for the parties to respond to that
5 has got to be preserved.

6 So, for example, if they want to
7 proceed without counsel and that's a problem, we
8 need the opportunity to respond to that, or if
9 there's other motions to dismiss that are
10 appropriate, those would have to be preserved, as
11 well.

12 JUDGE RILEY: I understand that. But the
13 principal question that has got to be answered right
14 now is, Can the Applicant represent itself in
15 Illinois? And so far the answer is as clear as mud.

16 I think what might be the best idea is
17 for the 30-day continuance to sort this out. And
18 then I'll hold a ruling on the motions to withdraw
19 in abeyance until we have a definitive answer.

20 Mr. Gentile, what kind of time are we
21 talking about?

22 MR. GENTILE: 30 days would be sufficient, sir.

1 JUDGE RILEY: Today being September 15 --

2 MR. GENTILE: Third week in October would be

3 fine.

4 JUDGE RILEY: Could we reconvene on October 18?

5 MS. LUCKEY: That's fine for Staff.

6 MR. GENTILE: That's fine for me, sir, IQ

7 Telecom.

8 MS. SATTER: Did you say October 18th?

9 JUDGE RILEY: October 18, right.

10 MS. SATTER: Could we make it either the 17th or

11 the 19th? I have a conflict on the 18th, unless

12 it's in the afternoon.

13 JUDGE RILEY: I'm sorry?

14 MS. SATTER: Unless it's in the afternoon on the

15 18th.

16 JUDGE RILEY: 1:30 in the afternoon?

17 Ms. Cohen, I understand you're in

18 New Mexico, is that correct?

19 MS. COHEN: Yes, I am. So that's a different

20 time for me. But 1:30 Central Time on the 18th is

21 fine with me.

22 JUDGE RILEY: It is. All right.

1 MS. COHEN: Yes.

2 JUDGE RILEY: I think it's the best idea right
3 now to leave it at that and let's research this
4 question with regard to the motion to withdraw and
5 whether or not the corporation can, in fact,
6 represent itself in Illinois and get a definitive
7 answer on that, then I can rule on the motion and we
8 can proceed from there.

9 MR. LANNON: Your Honor, Staff would be happy
10 to, you know, assist you in this endeavor by doing
11 some research. I guess the question is, how we
12 would present that to you. It probably would depend
13 on the answer. I mean, if the Supreme Court rules
14 preclude a corporate officer from representing
15 himself in an Illinois Administrative hearing, then
16 we would, most likely, file a motion to dismiss.

17 JUDGE RILEY: Understood.

18 MR. LANNON: Now, I'm not sure how to handle it
19 if the answer turns out to be the other way.

20 JUDGE RILEY: In other words, if a corporation
21 can represent itself in Illinois?

22 MR. LANNON: Yeah, in an administrative hearing.

1 Should we just send you an e-mail and
2 all the parties or would you like something more
3 formal? I'm not sure how to proceed on that point.

4 JUDGE RILEY: Well, inasmuch as we've got a
5 formal motion to withdraw, I don't want to drag --
6 make this into, you know, a long-drawn out process.
7 It should be fairly straightforward and to the
8 point.

9 I'd feel a lot better if there was
10 something filed a little more formally.

11 MR. LANNON: Okay.

12 JUDGE RILEY: That way all the parties will have
13 it.

14 MR. LANNON: Yeah, absolutely. We'll share it
15 with everybody.

16 JUDGE RILEY: Okay. And the main thing is to
17 get an answer.

18 MR. LANNON: Correct.

19 JUDGE RILEY: Let's pin this question down.

20 MR. LANNON: Maybe I'll caption it something
21 like --

22 MR. WARD: Your Honor, this is Michael Ward.

1 I suggest, one of the things you may
2 want to consider doing, there may be a simple answer
3 to this. We just need somebody to look it up. Do
4 you want to just recess for 30 minutes or 20 minutes
5 and see if there is a simple answer?

6 JUDGE RILEY: If we can get a simple answer in
7 that time, certainly.

8 MR. WARD: I'm looking at the Supreme Court
9 rules now and I'm sure there's one that's
10 applicable, but it will take us a couple minutes to
11 find it, read it.

12 JUDGE RILEY: All right. I'll do the same thing
13 on this end.

14 MR. WARD: You want to recess this for -- until
15 1:00 or quarter till?

16 JUDGE RILEY: Want to come back at 11:00 a.m.?

17 COURT REPORTER: I have a hearing.

18 JUDGE RILEY: All right. The court reporter is
19 not going to be available after 11:00 o'clock.

20 MS. SATTER: Well, I guess then that's that.

21 MR. WARD: How about just recess for 20 minutes.

22 MS. LUCKEY: We can do it around 2:00 p.m.

1 There's a Commission meeting for union members at
2 12:30.

3 JUDGE RILEY: At 12:30. We're talking about
4 getting this done in the next 20 minutes or so.

5 MS. LUCKEY: Okay.

6 JUDGE RILEY: Is that all right?

7 MR. LANNON: So just come back here --

8 MR. WARD: I'm just saying, if there's a quick
9 answer, let's find it. If there's not, then you'll
10 take care of a continuance.

11 JUDGE RILEY: Okay. Then I can call you back on
12 the same bridge number then? That's a question.

13 MR. WARD: Does that work?

14 MS. SATTER: Do you want us to just leave the
15 phones open or do you want to call back?

16 MR. CROCKER: No, please don't do that.

17 JUDGE RILEY: All right. I'll try and get back
18 to the parties on the same bridge number. That will
19 be just about 10 minutes to 11:00.

20 (Whereupon, a short
21 recess was taken.)

22 JUDGE RILEY: We recessed to do a little bit of

1 research on the matter of whether or not a
2 corporation can represent itself in Illinois.

3 It was brought to my attention that
4 the Supreme Court rule that prohibits such
5 self-representation applies to small claims court
6 only, which is not applicable here.

7 Staff, what did you come up with
8 otherwise?

9 MS. LUCKEY: Sorry, your Honor, if I could just
10 interrupt.

11 The Supreme Court rules that allows
12 corporate officers to represent themselves is a
13 small claims court.

14 JUDGE RILEY: I'm sorry, is a small claims
15 court, excuse me.

16 MR. LANNON: With that in mind and Staff being
17 unable to find any other Supreme Court rule that
18 addresses the issue in front of us, which is whether
19 a corporate officer can represent itself in an
20 Illinois administrative hearing, it's Staff's
21 opinion that the Commission Part 200.90(c) would
22 then be controlling unless the Commission has

1 including, you know, one of the other ETC's
2 applications.

3 MR. LANNON: And, your Honor, I would also note,
4 along those lines, Staff often represents itself
5 without the aid of OGC.

6 JUDGE RILEY: No, that's understood.

7 Mr. Gentile, again, are you there?

8 (No response.)

9 JUDGE RILEY: He, possibly, has left the
10 proceeding.

11 MR. GENTILE: I'm here, sir. Sorry.

12 JUDGE RILEY: What is your response to --

13 MR. GENTILE: My response is, I should be able
14 to represent myself, sir.

15 JUDGE RILEY: All right. Let me ask you this,
16 have you already severed any -- your business
17 relationship with Mr. Ward and Mr. Crocker?

18 MR. GENTILE: Yes.

19 JUDGE RILEY: So it is your statement, then,
20 that you are not represented by either of them and
21 that is by your choice?

22 MR. GENTILE: Yes, it is, sir.

1 JUDGE RILEY: Well, then, I don't see any --

2 Ms. Satter, did you want to respond?

3 MS. SATTER: No. No. I accept, I believe, what
4 other people have said.

5 JUDGE RILEY: Well, insofar as Mr. Gentile has
6 very clearly stated that he no longer chooses to be
7 represented by either Mr. Crocker or by Mr. Ward, I
8 see no problem with granting the motion and allowing
9 both Mr. Ward and Mr. Crocker to withdraw from this
10 proceeding.

11 Now, as to whether or not Mr. Gentile
12 can represent himself, that's the next question and
13 that's what I want to continue this for, to get a
14 little bit more research on that and get a more
15 definitive answer. I think, in my mind, it's still
16 too up in the air.

17 MR. LANNON: Yeah. And, your Honor, along those
18 lines, I think we've already picked October 18th at
19 1:30. That gives us plenty of --

20 JUDGE RILEY: Excuse me. We're going to have to
21 make that the 17th because Ms. Cohen wasn't
22 available.

1 MS. COHEN: No, I'm fine.

2 JUDGE RILEY: My mistake. My mistake. That's

3 right, we set it for the afternoon so you would be

4 available on the 18th.

5 MS. COHEN: I think it was Ms. Satter who had

6 the conflict.

7 MS. SATTER: Right.

8 MS. COHEN: But I'm fine at 1:30 Central on

9 Tuesday.

10 MS. SATTER: I just wanted to mention that

11 there's a Bench scheduled for 1:30 that day. So to

12 the extent that that matters, we might want to make

13 it 2:00 o'clock.

14 JUDGE RILEY: Well, it's a pre-Bench session,

15 isn't it?

16 MS. SATTER: Yes. And sometimes those are

17 canceled.

18 JUDGE RILEY: I'm sorry.

19 MS. SATTER: Sometimes those are canceled.

20 JUDGE RILEY: Quite often they are.

21 MR. LANNON: It's no problem for Staff.

22 MS. LUCKEY: It's no problem for Staff.

1 MS. SATTER: All right. 1:30 is fine with me,
2 too.

3 JUDGE RILEY: October 18th at 1:30.

4 MR. LANNON: Right.

5 JUDGE RILEY: And we will have an answer with
6 regard to the corporate pro se appearance by that
7 time.

8 MR. LANNON: And I'll check with our Appellate
9 group, your Honor.

10 JUDGE RILEY: All right.

11 Mr. Ward and Mr. Crocker, you are
12 withdrawn. Thank you very much.

13 MR. CROCKER: Thank you, your Honor.

14 JUDGE RILEY: Mr. Gentile, we will reconvene on
15 October 18th at 1:30 and we'll revisit this matter
16 and we'll get it sorted out.

17 There's a considerable amount of
18 technical and legal skill involved here and that's
19 one of the concerns that I have. Staff has filed a
20 substantial amount of testimony. And it's going to,
21 very possibly, necessitate considerable rebuttal.

22 So let's revisit this on October 18 at

1 1:30 and we'll see where we are then.

2 MS. LUCKEY: Thank you.

3 MR. LANNON: Thank you.

4 JUDGE RILEY: Thank you very much.

5 MS. SATTER: Thank you.

6 (Whereupon, the above-entitled
7 matter was continued to
8 October 18, 2011.)

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